



555 California Street
12th Floor
San Francisco, CA 94104

415.875.2300
Fenwick.com

Todd R. Gregorian
tgregorian@fenwick.com | 415.875.2402

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Molly C. Dwyer, Clerk of the Court
Office of the Clerk
U.S. Court of Appeals for the Ninth Circuit
P.O. Box. 193939
San Francisco, CA 94119-3939

Re: Yuga Labs, Inc. v. Ripps, et al., Case No. 22-56199

Yuga Labs provides notice under Federal Rule of Appellate Procedure 28(j) of this Court's decision in *Martinez v. ZoomInfo Tech. Inc.*, — F. 4th —, No. 22-35305 (2023). The opinion is attached as **Exhibit A**.

Yuga Labs argued in the jurisdictional statement section of its answering brief that the denial of an anti-SLAPP motion under California Code of Civil Procedure § 425.16 should not be reviewable under the collateral order doctrine because such motions require an evaluation of the merits. Answering Brief at 4-5.

Martinez issued after Yuga Labs filed its answering brief, and the concurrences by Judges McKeown and Desai support Yuga Labs' position. Judge McKeown wrote a separate concurrence that concluded that "a motion based on California's anti-SLAPP statute is wholly grounded in that state's procedural law" and that the Court has nevertheless "decided that we will adopt the California state procedural rules as to when the denial of a SLAPP motion is appealable" which is "at odds with the venerable doctrine of *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938)" and "places us in the minority among our sister circuits." Ex. A at 19-20.

Similarly, Judge Desai concluded that denial of an anti-SLAPP motion should not be immediately appealable because "anti-SLAPP motions to strike require the court to assess the merits of a plaintiff's claims and are not effectively unreviewable on appeal from a final judgment" because "the merits of the plaintiff's claims and the defendant's defenses can be reviewed upon a final judgment." *Id.* at 24.

October 6, 2023

Page 2

Sincerely,

FENWICK & WEST LLP

/s/ Todd R. Gregorian

Todd R. Gregorian

cc: All Counsel of Record